IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 35565 of 2007(H)

(AGAINST ORDER DATED 16/11/2007 PASSED BY THE PRINCIPAL SUB COURT, ALAPPUZHA IN I.A. 1996/07 IN O.S. 129/06)

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PETITIONER CR. PETITIONER/ PLAINTIFF:

ULAHANNAN JOHN, AGED 58, S/O.ULAHANNAN, MADASSERIL HOUSE, KALAVOOR P.O., KATOOR MURI, KALAVOOR VILLAGE, AMBALAPPUZHA TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.MANJU ANTONEY.

RESPONDENT/ PETITIONER:

STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, ALAPPUZHA.

BY GOVT. PLEADER SMT. R. BINDU.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.35565 OF 2007

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Dated this the 1st day of December 2007

JUDGMENT

This writ petition is preferred against the order of the Prl.Sub Court, Alappuzha in I.A.No.1996 of 2007 in O.S.No.129 of 2006. This application is filed by the District Collector, Alappuzha under Order 33 Rule 12 and Section 151 C.P.C. to dis-pauper the petitioner and directing him to pay court fee under the provisions of the Act. Learned counsel for the petitioner had taken me through Order 33 Rules 10 to 11-A which deals with success of the indigent person, failure of the indigent person and abatement on account of the death of the indigent person. Order 33 Rule 12 contemplates a situation only where it is covered by Order 33 Rules 10 to 11-A. I feel that there is considerable force in the contention of the learned counsel for the petitioner and the time for State to make an application under Order 33 Rule 12 has not arisen in this case and therefore the order suffers from serious infirmity which is liable to be interfered with. Order 33 Rule 9 always enables the Government Pleader to file an application with a prayer to withdraw the permission to sue as an indigent person. But the

only mandate is there must be 7 days' clear notice in writing.

Therefore, I allow this writ petition and set aside the order passed by the court below and grant permission to the Government to move an application under Order 33 Rule 9 and the court to give 7 days' clear notice to the other side and permit both sides to adduce evidence in support of their contentions and dispose of the matter in accordance with law.

M.N.KRISHNAN, JUDGE

Cdp/-